

State Board of Elections Board Meeting
Tuesday, February 20, 2007
10:30 a.m.

MINUTES

PRESENT: Jesse R. Smart, Chairman
Wanda L. Rednour, Vice Chair
Patrick A. Brady, Member
John R. Keith, Member
William M. McGuffage, Member
Albert S. Porter, Member
Bryan A. Schneider, Member
Robert J. Walters, Member

ALSO PRESENT: Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Darlene Gervase, Administrative Specialist II

Chairman Smart called the meeting to order and lead everyone in the pledge of allegiance.

The regular monthly meeting of the State Board of Elections was called to order at 10:30 a.m. with 6 members present. Mr. Porter held Mr. McGuffage's proxy until his arrival at 12:43 p.m. and Chairman Smart held Mr. Brady's proxy until his arrival at 10:38 a.m.

Executive Director White presented the minutes of the January 16, 2007 meeting, noting one correction on the last page. Mr. Keith noted a typographical error on page 6 wherein FY06 should read FY07. Vice Chairman Rednour moved and Mr. Walters seconded the motion to ratify the minutes with the noted changes. The motion passed by roll call vote of 8-0.

Mr. White indicated the next time on his report was a review of the Cook County voting system issues at the November General Election. He reported that Chairman Smart and he met with Cook County Elections Executive Director Clem Balanoff for 3 hours discussing the matter and provided materials presented by Mr. Balanoff. Director White introduced Cook County Clerk David Orr, who was present to speak on the matter and respond to questions. Clerk Orr introduced Mr. Balanoff and Ms. Jan Kralovec, Deputy Director of Elections in charge of provisional voting, and who did a lot of research on early voting as well. He refreshed everyone's memories with the problems at the November 7th election and solutions to correct them. Mr. Orr concluded his report with compliments to the Board on the VISTA statewide voter program. He indicated that the program enables them to easily clean up the voter registration files and at a faster pace. Chairman Smart thanked Clerk Orr, Mr. Balanoff and Ms. Kralovec for attending and indicated that some people wanted to rebut Mr. Orr's statements, but he took the liberty of contacting them to say that the real test is next week's Primary Election and if there are problems they are welcome to present any information they deem relevant to the board at the next meeting.

Mr. White asked Dianne Felts, Director of Voting Systems and Standards to present voting systems for certification. Ms. Felts introduced Pat Whalen and James Dalton of ES&S. She recommended 2 year interim approvals for the ES&S AutoMark VAT 1.1.2258 and ES&S M100 version 5.2.1.0 noting that changes be made within the 2 year timeframe and indicated that the changes are ready, but ITA is running 6-7 months for approvals. Mr. Keith was concerned that the changes could not be done in time for the February 2008 election. Mr. Walters moved for approval of the ES&S AutoMARK VAT 1.1.2258 and to accept Director Felts' recommendation. Vice Chairman Rednour seconded the motion which passed 7-1 with Mr. Keith voting against the motion for reasons specified. Vice Chairman Rednour moved to approve the certification of the ES&S M100 version 5.2.1.0. Mr. Walters seconded the motion which passed 8-0.

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Ms. Felts introduced Mr. Larry Calvert of Diebold and continued with the Diebold ExpressPoll 4000 and 5000 report. She recommended 2 year interim certification. Mr. Walters moved and Mr. Brady seconded the motion to approve the interim certification. The motion passed 8-0.

Ms. Felts requested certification for the Hart 6.2 cumulative fraction voting for the city of Peoria. This system previously had been given interim approval for the Consolidated Primary Election and she recommends this modification for certification for the April Consolidated Election also. She further recommended that the city's tabulation tapes not be produced in the precincts at the election and that the tapes be folded so the council votes do not show. Mr. Keith moved and Vice Chairman Rednour seconded the motion to adopt the recommendation with the proviso that they have to be in compliance with the agreement as referred to by Mrs. Felts. The motion carried unanimously.

The Executive Director presented an amended certification from St. Clair County and asked the Board to approve it. He indicated that the error was due to a procedural problem that replaced Election Day results with provisional vote totals in two precincts. It did not alter the outcome of any elected office and the Board's official vote total book has been amended to reflect the changes. Mr. Brady moved to recertify the votes of St. Clair County. Vice Chairman Rednour seconded the motion which passed 8-0.

Before Mr. White turned over the legislative update to the General Counsel, he commented that Cris Cray, our legislative director, has been active in advancing the Board's agenda and securing sponsorship and she has met with the clerks at their Winter Conference to discuss legislation. Mr. White indicated that the Board has a sponsor, Senator Schoenberg, for the *King* case attorneys' fees, but a House sponsor has not yet been found. Mr. Sandvoss presented the legislative update which included 2 letters, one involving the validity of Petitions under Article 28; and the other dealt with consolidation of filing periods, apparent conformity and reducing the number of new political party signatures. Also discussed was a requirement for petition signers to print their name or to allow the circulator to print their name on the petition. No action was taken by the board and these matters will be revisited at the March meeting. Other legislative matters consisted of the Director advising the board that while Illinois already has a paper trail, legislation mandating a paper trail and making paper ballots the official ballot have been introduced at the federal level, but nothing has passed yet. Also a resolution in Congress to fully fund HAVA was introduced. The Board asked Mr. White to keep them advised of any activity.

Three informational items regarding the February 27 Consolidate Primary were presented by Director White. They included the Election Day assignments; election judge training schools; and pre election testing of voting equipment in Boone, Coles, Moultrie and Williamson counties. A remote problem in Boone was corrected by replacing a tabulator.

Mr. White noted that the County Clerks Winter Conference, including 19 new clerks, was attended by Chairman Smart and several staff members. The Chairman added that he had lunch and visited with the clerks, who seem like a very happy group.

A recap of the Campaign Disclosure Downlink Seminar indicated that the workshop was broadcast to 14 sites around the state and is available as streaming video on the Board's website as well. Many questions during the live question and answer period indicated that many people attended.

The Director concluded his report with information matters regarding FY07 and HAVA fund fiscal status reports and the 2-year plan of staff activity for February and March.

Board Member Patrick Brady reminded Mr. White that public notices regarding future Board meetings must include the addresses where video conferencing will be available. Mr. White indicated that some of the video conferencing equipment has been received and installation will be scheduled when all equipment is received.

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Shortly after Noon, General Counsel Steve Sandvoss began his report with a carryover Motion for Reconsideration from the Chicago Southland Chamber of Commerce PAC, 06 JS089. Mr. Rick Klein, Chairman of Southland PAC was present.. He stated that the former Chairman diverted money to another entity and has been habitually late and the Chairman had been removed. Mr. Klein indicated the PAC's desire to make restitution. He stated that the PAC has \$260, they have changed leadership and updated their by-laws. Mr. Sandvoss cautioned the Board that if the motion is denied, appeal item #28 will be impacted resulting in a second violation or a civil penalty assessed for a second violation and the total due and owing would be \$5800. Mr. Keith moved to adopt the recommendation of the General Counsel and deny reconsideration. Vice Chairman Rednour seconded the motion which passed 7-1 with Mr. Walters voting no.

Mr. Sandvoss indicated that an attorney for the Sullivan committee, Number 2.a.8 on the agenda, requested the matter be held over to the March or April meeting. Mr. Schneider indicated that he would like to see an amended hearing officer's report.

The Chairman presented eleven new appeals of campaign disclosure fines and asked the General Counsel for his remarks. Mr. Sandvoss concurred with the Hearing Officer to grant the appeals. Mr. Keith moved to adopt the General Counsel's recommendation and Grant the Appeals. Mr. Brady seconded the motion which passed unanimously. Appeals are granted for: *SBE v. Kankakee County Democratic Central Committee*, S713, 06GE031; *SBE v. Citizens for Ronald a. Wait*, S2926, 06AP012; *SBE v. Committee to Re-Elect Brent Hassert*, S5556, 06AP014; *SBE v. Democratic Organization of Lyons Township*, S7382, 06AP079; *SBE v. Friends of Don Harmon*, S7965, 06AP103; *SBE v. Committee to Elect Steve haring*, S8487, 06AG019; *SBE v. Citizens for Steve Goebel*, S8946, 06AP043; *SBE v. Friends of Greg Tuite*, S9011, 06AP025; *SBE v. Citizens for Belford*, S9198, 06AG 028; *SBE v. Citizens for Elect Jill Tracy*, S9219, 06AP029; and *SBE v. Donne Trotter*, S4245, 06AP097.

Mr. Sandvoss continued with *SBE v. Lisle Township Republican Organization*, S953, 06AP073 and concurred with the recommendation of the hearing officer to grant the appeal as the treasurer did not have knowledge of the checked until the A-1 period had passed.. Mr. Fisher. appeared on behalf of the committee and indicated that the checks were reimbursements by individuals to the committee for seats purchased for the DuPage County Lincoln Day Dinner. Further, that the checks were dated March 3 and March 6, but the committee did not received the money until early May and proof to that effect was presented at the hearing. Mr. Schneider moved to Grant the Appeal with the explanation that was offered and Mr. Porter seconded the motion. The motion passed by roll call voter of 8-0.

The General Counsel presented *SBE v. Citizens for Sidney Mathias*, S7208, 06AP091 and concurred with the recommendation of the hearing officer to grant the appeal. Mr. Keith asked that this be sent back to the hearing officer to determine whether or not the facts of the mailing correspond with the testimony; and if not, whether or not our staff should file a complaint against IPACE if that corresponds. Mr. Schneider's motion to agree with the recommendations of the hearing officer and general counsel to grant the appeal was seconded by Mr. Porter. The motion passed by a 5-1-1-1 vote with Mr. Keith voting No; Mr. Brady passing, and Mr. Walters voting present.

Mr. Sandvoss agreed with the recommendation of the hearing officer regarding *SBE v. Citizens for Sandy Cole*, S8874, 06AG021 and stated for the record that the committee amended their report to correct the receipt dates on the December semi-annual report as required by the hearing officers report and if the Board decides to adopt the recommendation of the hearing officer it would be without the requirement that they file additional amendments as they have already. The Chairman asked for a motion and Mr. Keith so moved. Vice Chairman Rednour seconded the motion which passed unanimously.

The General Counsel's report continued with *SBE v. Citizens for Esther Golar*, S9080, 06AP088. Mr. Schneider asked for clarification of the in-kind contribution. He agreed that the candidate made an effort to secure the value and moved to accept the hearing officer's report and grant the appeal. Mr. Porter seconded the motion which passed 8-0.

The Chairman called item number 17, *SBE v. Citizens for Noverini*, L10919, 06AG003, and Mr. Keith moved to grant the appeal. Vice Chairman Rednour seconded the motion which passed unanimously.

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Mr. Keith asked about the status of the no postmark rule as it relates to *SBE v. Citizens for Michael Hawkins*, L13164, 06GE017. As granting this appeal would be in compliance with the rules proffered, Mr. Keith moved to grant the appeal. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

Chairman Smart indicated that *SBE v. Citizens for Harry Osterman*, S7529, 06AP016 and *SBE v. Citizens in Action*, S8792, 05MA007 will be continued until a later date.

Mr. Sandvoss concurred with the recommendation of the hearing officers to deny the appeals in *SBE v. Barrington Township Republican Org.*, S823, 06GE032; *SBE v. Regular Republican Party of River Forest*, S833, 06GE033; *SBE v. LaSalle County Republican Central Committee*, S1680, 06GE034; *SBE v. Friends of Joy Cunningham*, S9010, 06AP093; *SBE v. Republican Club of Evanston*, L13270, 06GE019; and *SBE v. Friends of Vanessa Romeo*, S13471, 06GE022. Mr. Keith moved and Vice Chairman Rednour seconded the motion to concur with the recommendation of the hearing officer and general counsel and deny the appeals. The motion passed unanimously.

The Chairman called number 23, *SBE v. Indo American Democratic Organization*, S2602, 06AP011, and Mr. Sandvoss concurred with the recommendation of the hearing officer. A member of the committee appeared and spoke. Mr. Keith moved to deny the appeal and Mr. Brady seconded the motion which passed 8-0.

Mr. Sandvoss agreed with the recommendation to deny the appeal in *SBE v. Northeastern IL Federation of Labor AFL-CIO*, S6753 06GE042. Mr. Tim Drea with Local 181 of the United Commercial Workers spoke for the respondent committee and made a settlement offer of \$275. Although the offer was low, Mr. McGuffage moved to accept the \$275 offer and suggested that Mr. Drea work closely with the Public Disclosure staff to get their accounts straightened out. Vice Chairman Rednour seconded the motion which passed 5-3 with Messrs. Brady, Keith and Walters voting no.

Mr. Schneider asked for a brief point of order to ask Mr. Sandvoss and Mr. Borgsmiller to look at FEC promulgated or proposed rules creating a safe harbor for committees who must deal with the actions of a person in charge doing something wrong.

The Chairman called *SBE v. Friends of Barrett F. Pedersen*, S7600, 06AP101. Mr. Sandvoss concurred with the recommendation and the Chairman recognized Mr. Barrett Pederson. Mr. Keith moved to adopt the recommendation of the hearing officer and general counsel and deny the appeal. Mr. Brady seconded the motion which passed unanimously.

Since the Board denied the motion to reconsider in item number 2, this is a second time offense for the Chicago Southland Chamber of Commerce PAC, S7782, 06GE042 and both penalties are due and owing. Mr. Klein made a settlement offer of \$1000 and asked to work out a plan for payment. Mr. McGuffage so moved and Vice Chairman Rednour seconded the motion which carried by 6-2 vote with Messrs. Brady and Keith voting against the motion.

Mr. Keith asked that *SBE v. Friends for Howland*, S8930, 6AG023 go back to the hearing officer to explain if technical difficulty had been used as a defense and granted by the Board in the past. This matter was continued to the next meeting.

Chairman Smart noted that someone was present to speak on item 32, *SBE v. Ramon Ocasio for Judge*, S9070, 06GE059. Ms. Margarita Rosa introduced herself as the treasurer of the committee and asked for a waiver of the charges. She explained that she is not a computer person, lawyer, nor a paid treasurer. Further that she had prepared the documents early in the evening and attempted to file them electronically before midnight. Mr. McGuffage moved to grant the appeal and Mr. Walters seconded the motion. The motion carried 7-1 with Mr. Keith voting no.

The Chairman called *SBE v. DeKalb County Democrats*, L56, 06AP069 and accepted the appearances of Richard Baker, the new treasurer and Chairman Elaine Dubin. Two fines were assessed on the committee, one for \$2150 and the second for \$400. A settlement offer of \$1000 was proposed. Mr. Porter moved to accept one thousand dollars in settlement of the total amount of \$2550 in this case. Mr. McGuffage seconded the motion. The motion failed by 4-4 vote with Member Brady, Keith,

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Walters and Chairman Smart voting no. Treasurer Baker offered \$1275 and Mr. McGuffage moved to accept the settlement offer of half of the total fine. Mr. Porter seconded the motion which failed by 3-5 vote. Members Brady, Keith, Schneider, Walters and Chairman Smart voted against the motion. Mr. Brady moved to accept the recommendation of the hearing officer and deny the appeal. Members McGuffage and Porter stated that the board is treating this committee differently than the others. Mr. Walters seconded the motion which passed 5-3 with Members McGuffage, Porter and Vice Chairman Rednour voting no.

Mr. Sandvoss asked for a correction on the total of item 34, *SBE v. Cunningham for County Clerk*, L10813, 06AG002. He asked if the Board would make a motion to assess \$118 which is 10% of the amount assessed. Mr. Keith moved to adopt the recommendation of the hearing officer and general counsel as to the disposition of the case with a fine of \$118. Mr. Brady seconded the motion which passed unanimously.

Agenda items 37, *SBE v. Volunteers for Delgado*, S6409, 06AP098, and 38, *SBE v. Cary J. Collins for Judge*, S9114, 06AP092, new appeals of campaign disclosure fines, were taken together. Mr. Keith moved to adopt the recommendation of the hearing officer and general counsel granting in part and denying in part the appeal and assess the fines as stated revised by the general counsel. Vice Chairman Rednour seconded the motion which passed 8-0.

Payment of civil penalties were presented for informational purposes.

Complainant and respondent in *Ketter v. Peickert*, 06CD048 waived confidentiality. Respondent, represented by attorney Richard Means agreed that he filed late, but has filed all reports and believes the case should end unless complainant has evidence to show reports are incorrect. Complainant argued that inaccurate statements were made and asked that discovery be done to ensure filing and filing accurately. The General Counsel recommended that the complaint was filed on justifiable grounds and staff to review the amended filings or the initial filings submitted to determine whether or not all reporting requirements have been adhered to and if staff finds discrepancies, a complaint will be filed and appropriate penalty assessed. Mr. Brady so moved and Mr. Walters seconded the motion which passed 7-0-1 with Mr. McGuffage voting present.

The matter of *DeLuna v. Gonzales*, 07CD001, was essentially the same as the previous matter. The General Counsel's recommendation was the same and there was no objection by either side. Member Brady moved to accept the recommendation of the general counsel and Mr. Walters seconded the motion which passed 7-0-1 with Mr. McGuffage voting present.

Parties in *Valentzas & Lundquist v. Stupegia & Ostdiek*, 06CD 046, waived confidentiality. The hearing officer recommended that the complaint was filed on justifiable grounds, but that a public hearing was not necessary. General Counsel Sandvoss concurred. Mr. Keith explained that adoption of that recommendation would still afford the complainants the opportunity to file a complaint against the reports as filed. Mr. Keith moved to adopt the recommendation of the hearing officer and general counsel. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

At this time Mr. McGuffage asked for leave to change his vote on two cases where he voted present to change both to aye. Mr. Keith moved to grant him leave to do that. Mr. Brady seconded the motion which passed unanimously.

Three complaints following closed preliminary hearing were passed until executive session and consideration of use of the Debt Collection Bureau was considered. After discussion, Mr. Keith moved to authorize staff to move forward and to bring the committee names who would be forwarded to the Department of Revenue to the Board at the next meeting. Mr. McGuffage seconded the motion which passed 8-0

Mr. John Hartman asked to address the board about signature requirements for independent and new party candidates and the impact of the 7th Circuit Federal Court of Appeals' decision in *Lee v. Keith*. Discussion ensued among the board. It is the consensus of the Board that the legislature amends the statute to reflect the court's decision without recommending any specific language.

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At 3:05 p.m. Mr. Keith moved to convene into Executive Session for consideration of cases 43, 44, 45 on the agenda, pending litigation and *Clemens v. Smith* and *Barry v. Matlack*. The motion was seconded by Member Brady and unanimously passed.

Open session resumed at 3:24 p.m. Mr. Keith moved to adopt the actions taken in executive session without changing any votes on item 44 on the agenda and the two new cases and Mr. McGuffage moved to adopt the actions taken in executive session without changing any votes on items 42 and 43 on the agenda. Vice Chairman Rednour seconded the motion which passed unanimously.

There being no further business before the Board, Chairman Smart announced the next meeting scheduled for March 19th at 10:30 a.m. in Springfield or the call of the Chairman. Vice Chairman Rednour moved to adjourn. Mr. Walters seconded the motion which passed unanimously. The meeting adjourned at 3:26 p.m.

DATED: March 14, 2007

Respectfully submitted,

Darlene Gervase, Administrative Specialist II

Daniel W. White, Executive Director